IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15605 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BANK OF INDIA

Versus

INDIAN OIL CORPORATION LTD.

Appearance:

1. Special Civil Application No. 15605 of 2003

MR JT TRIVEDI for Petitioner No. 1

MR BJ TRIVEDI for Petitioner No. 1

MS JIGNASA B TRIVEDI for Petitioner No. 1

NANAVATI ASSOCIATES for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 06/10/2004

ORAL JUDGEMENT

1. The petitioner herein has preferred this petition in order to quash and set aside the order below application exh.21 in Summary Suit No.141 of 2001 passed by the learned 2nd Jt.Civil Judge (S.D.), Bharuch on 19/07/2003, whereby, the said application below exh.21 was rejected.

2. Mr.J T Trivedi learned advocate for the petitioner Bank has submitted that the learned trial Judge was not justified in observing that as there was no dispute with regard to major policy matters and as the purpose of referring the matter to the High Powered Committee was to ensure that the dispute in case of major policy decisions was to save public money and court's valuable time, it was not necessary to direct the parties to the present lis to such a Committee, as no major policy matter of the Union of India or any of the State Government was under consideration or challenge.

3. I have heard learned counsel for the parties. The respondent herein - Indian Oil Corporation Ltd. preferred Summary Suit No.141 of 2001 before the Court of the learned 4th Jt.Civil Judge (S.D.), Bharuch, claiming the following reliefs;

"(A) Recovery of Rs.85,00,000/- being the amount undertaken by the defendant no.1 to be paid to the plaintiff on demand in case of failure to pay by defendant no.2 vide the six bank guarantees, details of which are provided in para 7 of the plaint plus Rs.12,75,000/- being the amount of interest @ 18% per annum from the date of invocation of the Bank Guarantee till today, plus Rs.50,000/- being the notice charges; total Rs.98,25,000/- with running interest @ 18% per annum on Rs.98,25,000/- from the date of suit till realization and the cost of this suit.

(B) Any other relief that might be deemed necessary and proper be granted."

4. From the above prayer, it is very clear that they are directed against the petitioner as well as against the private respondent.

5. Mr.J T Trivedi learned advocate for the petitioner has relied upon a decision in the case of Oil & Natural Gas Commission v. Collector of Central Excise reported in 1995 Suppl.(4) S.C.C., p.541. The said decision will not be applicable to the case on hand, as

in the present case, there is no dispute between the Government and the public sector undertaking. It is a dispute between the respondent - Indian Oil Corporation Ltd. and defendant no.2, where incidentally, because of the contractual obligation, bank guarantee was issued by the petitioner - Bank. If defendant no.2 had failed to fulfill its obligation, then the bank guarantee is required to be encashed. Therefore, the real issue is between defendant no.2 and the respondent - Indian Oil Corporation Ltd.. It may be that bank guarantee has been granted by a nationalized bank, but, there is no direct dispute between the present petitioner and the respondent Corporation. Therefore, in my view, the ratio laid down in O.N.G.C. v. Collector of Central Excises' case will not apply in the present case.

6. Apart from that, it is to be noted that the law on the question of the scope and ambit of the jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution of India is already settled by the Supreme Court. In the case of Surya Dev Rai Vs. Ram Chander Rai, reported in (2003)6 SCC 675 (A.I.R. 2003 S.C., p.3044), the Supreme Court has observed that while examining a petition under Article 227 of the Constitution of India, a writ of certiorari or the exercise of supervisory jurisdiction is not available to correct mere errors of fact or of law, unless the error is manifest and apparent on the face of the proceedings, such as when it is based on clear ignorance or utter disregard of the provisions of law and a grave injustice or gross failure of justice has occasioned thereby. The Supreme Court further observed as under:

> "The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdiction is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The

> High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis."

7. The aforesaid principles have been reiterated by the Supreme Court in the case of Yashwant Sakhalkar Vs. Hirabat Kamat Mhamai, reported in (2004)6 SCC 71, and in he case of Ranjeet Singh Vs. Ravi Prakash, reported in AIR 2004 SC 3892.

8. I have heard the learned counsel for the parties and perused the relevant documents on record. The trial Court has recorded a finding that the main dispute is between defendant no.1 and defendant no.2. Defendant no.2 is a proprietorship concern and is not a Public Sector Undertaking or a Department of the Union of India. Therefore, the present dispute will not fall within the scope of the types of disputes as described in the O.N.G.C. case (supra).

9. Furthermore, the transaction between the parties is a purely contractual transaction arising from the bank guarantee deed and it does not involve any fiscal or policy matters of the Union of India or of any Public Sector Undertaking. Hence, the entire issue is outside the scope and purview of the High Power Committee as the dispute is arising from commercial transactions. Therefore, in my view, the reasoning given by the trial Court is just and proper and no interference is called for by this Court under Article 227 of the Constitution of India.

10. In the result, the petition is dismissed. Rule is discharged with no order as to costs. Ad-interim relief granted earlier stands vacated.

11. At this stage, Mr.Trivedi for the petitioner has requested for continuation of interim relief granted earlier for a reasonable time. In my view, the respondent Corporation has filed the suit for recovery of more than Rupees 85 Lacs from a private individual, who has neither challenged the said order nor has filed any application and leave to defend application is pending because of this proceeding. If the petitioner - Bank is desirous to challenge this order then they are at liberty to do the same. Leave to defend order cannot be stayed because, ultimately, public money is with-held by a

private individual, which is not permissible in the interest of all concerned. Hence, the request for extension of interim relief is rejected.

(K. S. Jhaveri, J.)

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